

Date of decision: 06.05.96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(06.05.96)

Mr. D. R. Bhatt for the petitioner  
Mr. D. L. Shah for the respondents.

CAV JUDGMENT:

Heard the learned counsel for the parties.

The petitioner was appointed on the post of Tracer by order of respondent No.1 dated 12-7-1985. This appointment has been made after selection of the petitioner. The services of the petitioner were terminated under order dated 10-2-1986, which order has been challenged by the petitioner in the present writ petition. The writ petition was admitted by this court and the order of termination was stayed and it continues till date. The services of the petitioner were terminated on the ground that he did not possess the qualification prescribed for appointment to the post of Tracer. The qualification for the post is laid down by the Recruitment Rules for the Employees of the Gujarat Water Supply & Sewerage Board. These rules were framed in exercise of powers conferred by subsection 2(b) of section 77 of the Gujarat Water Supply and Sewerage Board Act, 1978. The qualification prescribed for direct selection to the post of Tracer under the afores.J

" To be eligible for appointment by direct selection to the post of Tracer in the Services of the Gujarat Water Supply and Sewerage Board, a candidate shall

--

(a) not be more than 25 years of ages;

(b) have passed the secondary school certificate examination or an equivalent examination recognised by Government;

(c) possess a certificate of civil Draftsmanship and Estimating awarded by the Department of Technical Education, Government of Gujarat or by the Institution recognised by the Government or have successfully undergone training course in Civil Draftsmanship in an Industrial Training Institution recognised by the Government.

(d) have adequate knowledge of Gujarati or Hindi or both.

Provided .R

candidate who possesses diploma in Civil Engineering."

2. There is no dispute that the petitioner passed secondary school certificate examination. The dispute centres round the second part of qualification. Learned counsel for the petitioner is unable to make out a case that

the petitioner possessed any of the qualifications as prescribed under clause (c) of Rule 3 of the aforesaid rules for the post of Tracer. Learned counsel for the petitioner relied on letter dated 1-3-1985 and states that the qualifications prescribed under the said letter are possessed by the petitioner. This letter is of no help to the petitioner for the reason that the Superintending Engineer was not the competent person to lay down the qualification for appointment to the post of Tracer. Otherwise also the qualifications contained in the letter aforesaid are contrary to the Rules framed by the Board under section 77 of the Gujarat Water Water Supply and Sewerage Board Act, 1978, and the same cannot be taken into consideration.

3. It has next been contended that the petitioner possessed the qualification of S.S.C. and he has also passed the examination of elementary and intermediate drawing examination, and also holds diploma in Fine Arts conferred by National Fine Art Correspondence Institute, Visnagar. These qualifications possessed by the petitioner are not sufficient. The petitioner has to possess, in addition to S.S.C., certificate of Civil Draftsmanship and Estimating awarded by the Department of Technical Education, Government of Gujarat or by the Institution recognised by the Government or certificate of training course in Civil Draftsmanship in an Industrial Training Institution recognised by the Government. In view of the fact that the petitioner did not possess the requisite qualification for appointment on the post of Tracer, his services were rightly terminated. The other contention that the respondents are estopped from terminating the services of the petitioner after selection is made on merits. It is a case of mistake committed by the respondents. Moreover, this Court will not allow appointment of the petitioner to continue as he does not possess the requisite qualification as prescribed under the Rules framed under section 77 of the Gujarat Water Supply and Sewerage Board Act, 1978.

4. Lastly the learned counsel for the petitioner contended that the order of termination is stayed by this Court and for all these ten years the petitioner has worked on the post and in case now the petitioner is dismissed from service it will cause hardship. He has also become age barred and he will not be able to get any other employment. This contention is again devoid of any substance. Merely because interim order was passed by this Court, the basic eligibility for appointment lacking in the petitioner will not be cured. It is only by the interim relief granted by this Court that the petitioner is continued in service. Only on this ground the writ petition cannot be accepted.

It is true that after ten years the petitioner may be on roads, but it is equally true that on this ground alone the Court may not allow to perpetuate illegality. Setting aside the order of termination of the petitioner will tantamount to restoration of the order of appointment which is per se illegal. To avoid such situations, the Supreme Court has time and again cautioned that in the matter of grant of interim relief the Courts including High Courts should be slow. The apex court has pointed out repeatedly that while entertaining the writ petition the High Court should not pass interim order, the nature of which is to grant a relief which can be granted only at the final disposal of such writ petition. Reference in this respect may have to be made to the decision of the Supreme Court in the case of P.R. Sinha vs. Inder Krishan Raina, reported in 1995(7) SCALE 207. Though the petitioner may have a hard case and some equity may have been created in his favour under the interim relief, on this ground the court will not lay down a bad law. This court will not issue a writ of mandamus or a writ of certiorari to perpetuate the illegality or to revive another illegal order. Reference in this respect may have to be made to the decision of the decision of the Patna High Court in the case of Devendra Prasad Gupta vs. State of Bihar, reported in AIR 1977 Patna 166.

5. In the result the writ petition fails and the same is dismissed. Rule discharged. Interim relief granted earlier by this Court stands vacated.

.....